IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 120 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JYOTSANABEN PRAMODRAY PRAJAPATI

Versus

DALABHAI VERSIBHAI

Appearance:

1. Civil Revision Application No. 120 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR DP KINARIWALA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

MR MB FAROOQUI for Respondent No. 2

UNSERVED-REFUSED (R) for Respondent No. 2-3

MR AV PRAJAPATI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/05/2004

ORAL JUDGEMENT

The petitioner herein has instituted a civil suit, being Civil Suit No.622/1988, against the present respondents, for getting possession of the suit premises. The case of the plaintiff is that the plaintiff is the owner of the suit property described in para 1 of the

plaint. According to the plaintiff, said premises was given on rent basis to defendant No.3 since 1982. According to the plaintiff, the defendant No.3 has parted with the possession to defendants No.1 and 2 and they have no right to occupy the said premises. The aforesaid suit was dismissed for default by the trial Court on 30th September, 1995.

2) The petitioner-herein, thereafter, preferred an application for restoration of the said suit, being Misc.Civil Application No.23/1996. In the said application, the petitioner has given reasons for restoring the aforesaid suit. According to the petitioner, she was informed by her advocate that the matter will come up for hearing after 7 to 8 years. As she has not received any information from her advocate, she contacted another advocate and at that time, she came to know on 12-2-1996, the suit was already dismissed. Accordingly, the said restoration application was filed on 7-3-1996. Since there was a delay in filing such application, an application for condonation of delay was filed.

3) The trial Court rejected the said application for condonation of delay, against which this revision application is filed by the original plaintiff.

4) Mr.Prajapati, learned advocate for the petitioner, submitted that there was a delay of 126 days, i.e. four months and six days, in filing aforesaid restoration application. He submitted that said restoration application was filed as back as in the year 1996 and the trial Court took six years in deciding the said application. The trial Court came to the conclusion in para 3 of its judgement that the petitioner can ask for similar relief in the cognate matter, being Civil Suit No.420/1986, and if this application is rejected, nobody is likely to be affected. On such irrelevant ground, the trial Court rejected the aforesaid application. Mr.Prajapati has submitted that the suit, reference of which is made by the trial Court, is already withdrawn by the original plaintiff. He submitted that the trial Court has not given cogent reasons for rejecting the application for condonation of delay. It is pointed out by Mr.Prajapati that even before the trial Court, the defendants had not even resisted the application for restoration of the suit and this revision application is also not seriously contested by the respondents.

5) Considering the order in question, in my view,

the trial Court has absolutely misdirected itself in rejecting the application by giving absolutely irrelevant grounds. It is surprising to note that the trial Court has come to the conclusion that if the application is rejected, nobody is likely to be affected and no prejudice is likely to be caused to anyone. It is difficult to understand the reasoning given by the learned trial Judge in this behalf.

6) Considering the reasoning given by the trial Court, I am convinced that the trial Court has not even considered the relevant facts and circumstances of the case and absolutely on irrelevant grounds, which are mentioned in para 3 of the judgement, has rejected the said application. The learned trial Judge has clearly failed to exercise his jurisdiction vested in him in law. Apart from the aforesaid aspect of the matter, by not condoning the delay in filing restoration application, said restoration application is dismissed. Since the trial Court has not given cogent reasons for rejecting the delay condonation application and rejected the said application absolutely on irrelevant grounds, this revision is allowed and the impugned order passed below Exh.1 in Misc.Civil Application No.23/1996 is quashed and set aside. Delay in filing restoration application is condoned. It is a matter of regret that the trial Court took six years in deciding such a simple and innocuous application for restoration, as the application was filed in 1996 and the same was decided in 2002.

7) In view of above order, the trial Court shall now proceed with the restoration application in accordance with law and on its own merits and may dispose of the same, after hearing both the sides, latest within 3 months after receiving the writ of this order.

8) Writ of this order to be sent to the trial Court forthwith.

9) Accordingly, this Civil Revision Application is allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)

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